IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2572 OF 2007

Smt Malutai Rangrao Ingale & Anr. ...Petitioners

Versus

Shri Ramesh Kalinga Lohar ...Respondent

Shri M.L. Patil for the Petitioners.

CORAM : ABHAY S.OKA, J.
DATED : JUNE 05, 2007.

P.C.:

1. Heard learned Advocate appearing for the Petitioners. The challenge in this Writ Petition under Article 227 of the Constitution of India is to the Judgment and Order dated 28th June, 2006 passed by the learned Civil Judge, Junior Division at Gadhinglaj below the Application at Exhibit 513 in the execution Application filed by the Respondent. By the said order, a warrant of possession has been ordered to be issued in execution for decree for possession.

2. The submission of the learned counsel appearing for the Petitioner is that averments made in the Application made by the Respondent Decree holder show that in fact a warrant of possession was issued earlier and was already executed. He submitted that as the

warrant of possession was already executed, there was no power vesting in the Court to issue a fresh warrant of possession on the basis of the same decree. He, therefore, submitted that the order re-issuing possession warrant is patently illegal.

3. I have considered the submissions. The averments made in paragraph No.1 of the Application filed by the Respondent cannot be read in isolation. If averments made in paragraph Nos.2 and 3 of the said Application are perused, it is obvious that the Respondent decree holder was not put in possession by executing the possession warrant. In fact the decree is not marked as satisfied. Considering this factual position, no fault can be found with the order issuing possession warrant for executing the decree which has attained finality. There is no merit in this Petition and the same is rejected.

JUDGE